

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE

UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
January 24, 2007  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

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1 COMMITTEE MEMBERS PRESENT:  
2  
3 Gail Clement, Chairperson  
4 Hal Gill, Vice-Chair  
5 Jon Findley  
6 Karen Gaylord  
7 Theresa Foster  
8 Michael O'Hara  
9 Andrea Martincic (Telephonic appearance.)  
10 Philip McNeely  
11 Tamara Huddleston  
12 Myron Smith  
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1           P R O C E E D I N G S

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3           CHAIRPERSON CLEMENT: Call to order. This the  
4 January 24th Underground Storage Tank Policy Commission  
5 meeting, and I will start a roll call with Mr. Smith.

6           MR. SMITH: Myron Smith.

7           MS. HUDDLESTON: Tamara Huddleston.

8           MR. MC NEELY: Philip McNeely.

9           MR. GILL: Hal Gill.

10          CHAIRPERSON CLEMENT: Gail Clement.

11          MR. O'HARA: Mike O'Hara.

12          MS. FOSTER: Theresa Foster.

13          MS. GAYLORD: Karen Gaylord.

14          MR. FINDLEY: Jon Findley.

15          CHAIRPERSON CLEMENT: Good morning everyone.

16 Welcome to the meeting, and I particularly want to thank  
17 the Commission for all being here at the start of the new  
18 year and get ourselves in shape for the rest of the year,  
19 hopefully.

20          We have two outstanding agenda items. Approval  
21 of the July and September 2006 meetings. I'll take those  
22 separately.

23          Did anyone have any discussion or comment on the  
24 July 2006 meeting minutes?

25          Is there a motion to approve?

1 MR. SMITH: I move the minutes be approved as  
2 written.

3 MR. MC NEELY: Second.

4 CHAIRPERSON CLEMENT: All in favor?

5 (Chorus of ayes.)

6 CHAIRPERSON CLEMENT: Anyone opposed?

7 The July 2006 UST Policy Commission meetings are  
8 approved.

9 Let's move to the September 2006 Policy  
10 Commission meeting minutes. Is there a motion to approve  
11 or is there any discussion or comments?

12 Is there a motion to approve?

13 MS. HUDDLESTON: I will move to approve.

14 MR. SMITH: I will second it.

15 CHAIRPERSON CLEMENT: All in favor?

16 (Chorus of ayes.)

17 CHAIRPERSON CLEMENT: Anyone opposed?

18 The September 2006 meeting minutes have been  
19 approved.

20 This has been a standing agenda item, the No. 3,  
21 the rules affecting the UST program, and there are a few,  
22 so, if you wouldn't mind, Mr. McNeely.

23 MR. MC NEELY: Madam Chair, the rules affecting  
24 the UST program. We currently we have two of them. The  
25 petroleum and chemical waste rules, the waste program

1 division. Right now they have what they call the PCS  
2 rules. They are combining that rule package with the  
3 special waste rules which deals with shredder fluff.  
4 Currently it's two separate rules. They're combining it  
5 to one rule packet, so that should be coming out in the  
6 next couple of months. I think they've had numerous  
7 stakeholder meetings over the last two years and they've  
8 been compiling all the comments and trying to revise the  
9 rule based on comments. So, that should be coming out in  
10 a couple of months. That's Waste Program Division  
11 handling that now from our Solid Waste Section.

12       Then the other rule package, the UST portion, the  
13 monitored natural attenuation and no further action rules,  
14 the MNA/NFA rules, which was, we're supposed to be in  
15 accordance with Senate Bill 1306. We are still internally  
16 reviewing those. Hopefully in the next month or so we can  
17 start having public meetings.

18       CHAIRPERSON CLEMENT: When you say public  
19 meetings, informal, formal or --

20       MR. MC NEELY: Oh, informal.

21       CHAIRPERSON CLEMENT: Okay.

22       MR. MC NEELY: We have a -- the process would be  
23 informal public meetings, come up with sort of a consensus  
24 rule package, then bring it to the UST Policy Commission  
25 for their, you know, buy-all or comment. And then we'll

1 do a formal process with the Secretary of State and the  
2 formal hearings.

3 So, hopefully, it's not going to be that long of  
4 a rule packet, but the concepts may be -- water providers,  
5 cities may want to have a say.

6 CHAIRPERSON CLEMENT: That's a pretty significant  
7 rule package for the program.

8 MR. MC NEELY: Right.

9 CHAIRPERSON CLEMENT: A couple of questions on  
10 the special waste/solid waste removal that are going to  
11 affect PCS. Are there any big issues regarding the PCS  
12 portion of those rules that we should be aware of?

13 MR. MC NEELY: The PCS, currently, if you are  
14 doing work in accordance with the UST program, and the UST  
15 corrective action rules, you are exempt from the PCS  
16 portion of it. And that's the way it's going to be in the  
17 rule package. They have it in there. They may decide if  
18 you are doing correction in accordance with any site, our  
19 corrective action rules, then you are exempt.

20 So that rule package is mainly how do you treat,  
21 dig up soils, contaminated soils from a UST, how do you  
22 treat it. What do you do with it, where do you send it,  
23 things like that. So, UST should be exempt from that.

24 CHAIRPERSON CLEMENT: Okay. Any other comments?

25 One more question. On the current proposed soil

1 remediation level rules, where is that going and when do  
2 you anticipate those to be filed?

3 MR. MC NEELY: They've been submitted to the  
4 Governor's Regulatory Review Counsel, and we're hoping it  
5 will be on the March 6th agenda. We haven't heard back  
6 from the GRRC staff. We haven't heard back from them yet,  
7 so we're assuming that we made the deadline and they will  
8 put it on the March 6th deadline GRRC hearing. At the  
9 very latest, if for some reason they say they can't get to  
10 it, which I think they will get to it, it would be on the  
11 April 3rd meeting, but we're expecting March 6th to be in  
12 the GRRC hearing.

13 CHAIRPERSON CLEMENT: Do you anticipate it going  
14 forward as written or any additional follow-ups with those  
15 rules?

16 MR. MC NEELY: We only had four sets of formal  
17 comments, and they really were not that significant, and I  
18 think that we're pretty sure they will go through, so  
19 60 days after March 6th or March 7th time frame, so  
20 probably early May they should be effective.

21 CHAIRPERSON CLEMENT: And the latest probably  
22 would be early June?

23 MR. MC NEELY: Right, if it goes into April.  
24 That's assuming GRRC approves it, and you never know, but  
25 I think they should be approved.



1 CHAIRPERSON CLEMENT: Okay. Does anybody else  
2 have any comments or questions regarding the rules?

3 Okay. Then we will move to the ADEQ Updates, and  
4 the first is Mr. McNeely with the Program Update.

5 MR. MC NEELY: UST Program Update. We have  
6 actually hired another State Lead Hydro III, so we have  
7 one more technical person on staff. We haven't lost any  
8 technical staff in the last few months. We've been doing  
9 pretty good holding steady. I'm not sure if the economy  
10 is slowing down out there or what, but we're holding our  
11 people.

12 And we've lost one unit manager, our Enforcement  
13 Unit Manager, Mike Traubert, who is pretty new, came from  
14 water, well, he moved on to ADOT, another State agency, so  
15 we're looking to hire our Enforcement Unit Manager.  
16 That's really the only active person we're looking for.

17 We have five inspectors on board now. Typically  
18 we've had three to four, usually three well-trained, one  
19 training, now we have got five, and we've had five for a  
20 couple of months, so we're expecting to try to increase  
21 our inspection cycle to every three years, which is what  
22 the Energy Act requires. We think we can do that with  
23 five inspectors. That's assuming we can hold onto five  
24 inspectors.

25 I think in terms of the rest of the program,

1 things are going pretty well. We're all just -- no major  
2 upsets with the budget. It looks like the budget will be  
3 okay for our program and no major legislation that's going  
4 to hurt the program in any way that we're aware of.

5 I guess I can talk about the Energy Act, since we  
6 don't really have it on there. We are not pursuing  
7 legislation for the Energy Act this year. We did run that  
8 up to the Governor's office, but it really is an unfunded  
9 mandate, and it has to go with -- to do that, you have to  
10 ask for funding, and that's a major challenge to ask for  
11 funding, so we're not pursuing it this year, even though  
12 three out of six items we can do, like the inspections,  
13 the reporting, things like that we can do without current  
14 -- without changing the statute. But the other three  
15 provisions, training, prohibition of -- delivery  
16 prohibition and the double wall or secondary containment,  
17 we can't necessarily enforce on that, but at the same time  
18 if training programs are developed across the country,  
19 maybe we could start looking at that as some type of  
20 optional way to do things.

21 Most of our tanks -- we're looking at that right  
22 now. Most of our tanks being installed in Arizona are  
23 secondarily contained already. I think it's because of  
24 the business decisions and liability decisions, I think  
25 most companies are putting in secondary tanks, so we're

1 just looking at how much legislative change we really need  
2 because I think we might be able to do some of this stuff  
3 voluntarily.

4 CHAIRPERSON CLEMENT: Is there any concern that  
5 the Federal Government will come in and try to implement  
6 the act or implement portions of the act that you're not  
7 doing?

8 MR. MC NEELY: That's the problem with the way  
9 the act is. The EPA, they're not writing rules, and I  
10 don't think they have really the authority to come in and  
11 start doing -- enforcing prohibition, delivery prohibition  
12 and things like that. So, what their hammer is really  
13 just saying they could take our funding away, and our  
14 funding this year is about 300,000 for the UST program,  
15 900,000 for the LUST program. That's the EPA grant  
16 funding.

17 But, they're trying to be realistic, not even the  
18 State can implement all this stuff as quickly as they want  
19 it, so what they're saying, if you are making progress  
20 towards implementing the act, they will let you keep your  
21 funding. So, I think we made progress on the inspections  
22 and made we made progress on the reporting, so we will  
23 just have to keep showing that we're making progress. At  
24 some point the progress will stop unless we have statutory  
25 change, so -- okay.

1 CHAIRPERSON CLEMENT: Thanks. Any other  
2 questions or comments?

3 Thank you. Anything else, Phil?

4 MR. MC NEELY: That's all.

5 CHAIRPERSON CLEMENT: The UST Corrective Action  
6 Monthly Update, Mr. Drosendahl.

7 MR. DROSENDAHL: Yes. Good morning. My name is  
8 Joe Drosendahl, the manager of the Corrective Action  
9 Section.

10 For the month of December, we opened up 4 new  
11 releases and closed out 19.

12 For the end of 2006, we ended up with 83 percent  
13 of all reported LUSTs being closed, and we're working on  
14 the rest the other 17 percent.

15 Currently, as of yesterday, we have 27 reports  
16 that have been submitted that are pending review. It  
17 seems like that number kind of fluctuates right around 30  
18 for a long time, so we get them in as soon as we get them  
19 out.

20 And I gave you the update on the Municipal Tank  
21 Closure Program. That's continuing. We still get  
22 applications submitted, and so far we've removed 105 USTs.

23 The Route 66 Initiative is going forward, and  
24 Bill Engstrom, who's the head of the Route 66, just  
25 updated our web site with some new information, so if you

1 are interested, definitely see our web site.

2       Actually, we actually had another new hire in  
3 December and another Hydrologist III in one of our Site  
4 Investigation and Remediation Units.

5       And that's it for the basic Corrective Action  
6 Section Review.

7       Regarding risk assessments, I still have not  
8 reviewed the information that we discussed at the  
9 Technical Subcommittee in regards to issues regarding risk  
10 assessments.

11       And we are in the process of fixing some of the,  
12 you know, minor flaws in the Tier II software internally.  
13 We fixed one, and we're going to be internally fixing some  
14 of the problems with some of the spreadsheet tables in the  
15 software, so hopefully that will be revised and up on the  
16 web.

17       CHAIRPERSON CLEMENT: Do you have a due date, Joe  
18 -- Mr. Drosendahl, when you expect those materials to be  
19 updated?

20       MR. DROSENDAHL: No. No specific date, no.

21       CHAIRPERSON CLEMENT: Do you have an internal  
22 goal that you'd like to tell us about?

23       MR. DROSENDAHL: The sooner the better.

24       MR. MC NEELY: Can I talk about that a little  
25 bit?

1       CHAIRPERSON CLEMENT: Certainly, Mr. McNeely.

2       MR. MC NEELY: On the risk assessment software,  
3 what we've done in the past is we've always contracted  
4 out, and it was written in computer code, which we didn't  
5 know, and it would be contracted out to a Phoenix firm and  
6 then have their computer programmers in California write  
7 the program, and be handed off and handed off and come  
8 back to us, and it never quite -- we think it would work  
9 and then it wouldn't quite work. So we've had internal IT  
10 folks actually dig into it so we don't have to keep  
11 putting it out for bid and keep waiting, because this is  
12 going -- we're probably -- or I'm probably more frustrated  
13 than you are on this thing. So we are actually internally  
14 are having some IT techs that know the code to fix it.  
15 So, it should be -- we are getting pretty close. I think  
16 the code's fixed. Now, we've just got to look at the XL  
17 spread sheets and make sure everything is connected right,  
18 so hopefully the worst is past us and we really should be  
19 past that subject.

20       CHAIRPERSON CLEMENT: That's a good move,  
21 actually, I think, to do it internally, because you just  
22 -- apparently we're not getting the kind of response or  
23 timeliness that you needed, which is unusual. Usually if  
24 you contract, you expect it to be more prompt.

25       MR. MC NEELY: What the problem is, you know,

1 there are computer programs in the risk assessor's, and I  
2 think there is a loss in communication and things come  
3 back that we have a problem with. So, now that we have --  
4 Jeanene can sit right with our computer programmer side by  
5 side, whenever we needed her upstairs, so I think if we  
6 have issues, we can solve them more quickly.

7 MR. GILL: I would just like to ask, you know, if  
8 you could move forward as quickly as possible on the  
9 definitions of -- or we can have another meeting to  
10 discuss that, so we can hear it. I am hearing there are  
11 indeed differences in the regulated public and in DEQ as  
12 far as what is considered a risk assessment screen and  
13 what is a risk assessment and that makes a big difference  
14 when you are turning in expecting reimbursement and it's  
15 denied for a reason that they don't understand that  
16 reason, because there has not been any clear-cut  
17 definition as to what they're actually submitting. And I  
18 think it needs to be done as quickly as possible, because  
19 risk assessment's being done every day, not on DEQ's  
20 software.

21 MR. MC NEELY: Okay.

22 CHAIRPERSON CLEMENT: Mr. McNeely, did you have  
23 anything to add?

24 MR. MC NEELY: I was going to add, Joe did not  
25 talk about the LUST reporting closed table that you guys

1 have. I wanted to bring that to your attention and point  
2 out some things. Does everyone have that table with  
3 LUSTs?

4 As you can see, we are still closing more than we  
5 opened every month, and this has the LUSTs reported and  
6 LUSTs closed by month.

7 So since July '06 when the SAF eligibility was  
8 cut off, you can see our reporting has been pretty steady,  
9 either four or three a month, so since July there's been  
10 about 22 reported.

11 But the closures you can see, July, 24, 15,  
12 August, just go down to the line, so we are still closing  
13 significantly more than we're opening, which is a good  
14 thing.

15 One thing we're going to have to track is these  
16 news releases being reported, how the Corrective Action  
17 Section is coming along with their FR, because that's  
18 going to be a make or break program if it actually works  
19 or not. So we're going to track those pretty closely, the  
20 new releases, and see if the insurance companies are  
21 actually coming through or actually reporting them to  
22 insurance companies, things like that, so hopefully in the  
23 next six months or so we will know how it's working.

24 CHAIRPERSON CLEMENT: And it's amazing there  
25 wasn't any big -- I guess there was. In June there was 30



1 reported, so there was a little bit of a blip that came  
2 prior to the July cut-off date, but not too significant.

3 MR. MC NEELY: Really, with all the mailings we  
4 did, and we've been talking about it for years in news  
5 letters and postcards, I was expecting hundreds to come  
6 in, but apparently maybe the new tanks are working or not  
7 releasing, or people don't want to know. Something  
8 happened, but there was not a big surge.

9 CHAIRPERSON CLEMENT: That's good. Maybe that  
10 means the program is under control.

11 Mr. Drosendahl?

12 MR. DROSENDAHL: I just wanted to mention that I  
13 noticed that there was House Bill 2484, which deals with  
14 changes to DWR regulations on well permits, and that might  
15 affect the regulated community.

16 CHAIRPERSON CLEMENT: Could you maybe give us a  
17 little -- I'm not familiar with that legislation.

18 MR. MC NEELY: I can give her a breakdown.

19 MR. SMITH: Which number again?

20 MR. DROSENDAHL: House Bill 2484.

21 MR. MC NEELY: And that's a bill that's just now  
22 -- it's extending -- last year DWR passed a rule package,  
23 spacing, site spacing rules, or something like that, for  
24 AMA wells, for wells with an AMA, exempt wells, wells that  
25 are covered by the AMA. That spacing rule did not cover

1 exempt wells less than 35 gallons a minute in AMA, and it  
2 did not include wells outside of AMA. So this rule  
3 package is talking -- this refers to pulling contamination  
4 to a well of record, so if you put a new well in anywhere  
5 in the State next to a contaminant plume and you pull  
6 contamination to an existing well and that contamination  
7 impacts that well, they can't use it anymore for the  
8 intended use, DWR has the option of denying the  
9 installation of that well, so it's very limited what this  
10 does, but it deals with contamination, basically Title 49,  
11 DEQ programs and existing wells.

12       You can still pull the contamination into the  
13 well you are putting in, I guess that's up to that owner  
14 to put that well in, and you can impact remediation  
15 systems, but as long as you don't pull it into an existing  
16 well, then it's okay.

17       CHAIRPERSON CLEMENT: Is it any existing well,  
18 including exempt wells, or is it --

19       MR. MC NEELY: All wells.

20       CHAIRPERSON CLEMENT: -- all wells.

21       MR. GILL: Isn't that assuming that they knew  
22 there was a plume there, wasn't WQARF handling it, that's  
23 the only thing that is monitored right now?

24       MR. MC NEELY: No. DWR has all of our covers for  
25 sites, UST sites and DOD sites.

1 CHAIRPERSON CLEMENT: Ms. Gaylord.

2 MS. GAYLORD: And I think it will have a direct  
3 impact on our volunteers, because not only the original  
4 DWR Rule, but also this new legislation, if it passes,  
5 will place the liability on well owners. It will lead to  
6 increased opposition to our MNA Rule by water providers  
7 and property owners who want to build a well to know that  
8 the aquifer will be, in effect, condemned while the  
9 contamination is there.

10 CHAIRPERSON CLEMENT: That's going to be an  
11 interesting conflict there.

12 MR. MC NEELY: I would like to respond to that.

13 CHAIRPERSON CLEMENT: Mr. McNeely.

14 MR. MC NEELY: In the MNA Rule, we're hoping  
15 we're not going to be closing -- or giving MNA if there is  
16 an exception to that close factor you have.

17 The concept we have is if there is no wells of  
18 record near the plume, there is no way it will be  
19 impacted, then we feel pretty comfortable saying, yes, you  
20 can do it, but if there is a well next door, we're  
21 probably saying, you need to actively do something.

22 CHAIRPERSON CLEMENT: Ms. Gaylord.

23 MS. GAYLORD: And I think that's exactly the  
24 point. I actually agree with Mr. McNeely. I think the  
25 well rules or the MNA Rule that Phil is contemplating will

1 protect wells that are already drilled, but folks who want  
2 to drill new wells to increase water supply for a growing  
3 population or property owners who want to retain the right  
4 to drill a well on their property will not be protected by  
5 the MNA Rule, and those are the people who may oppose our  
6 MNA Rule.

7 CHAIRPERSON CLEMENT: That's pretty right on. Is  
8 the responsibilities for the new well owner, do they have  
9 to do a hydrologic analysis? Do they have to do anything?  
10 They just have to provide a certification statement? What  
11 is it that they have to do to show something?

12 MR. MC NEELY: It's just in the same Notice of  
13 Intent to Drill form. It's the same form, same \$150 fee,  
14 and DWR goes through the same process they do now. There  
15 is nothing in the statute or in the bill that says they  
16 have to demonstrate or prove anything. It just says the  
17 director of DWR in consultation with DEQ can deny  
18 installation of this well if it impacts. It doesn't  
19 really have any requirement for the persons submitting the  
20 notice of intent to drill.

21 CHAIRPERSON CLEMENT: Ms. Gaylord.

22 MS. GAYLORD: And I haven't studied the  
23 legislation, but the original DWR Rule did provide for the  
24 applicant for a new well to submit the hydrology.

25 CHAIRPERSON CLEMENT: So there is that component

1 anyway. Interesting.

2 MR. MC NEELY: And this all came out at the SWAG  
3 recommendations, which is -- what's the SWAG stand for?  
4 Statewide Advisory Group for water. I think there is a  
5 lot of WQARF people on that, SRP people, and a lot of  
6 water providers in cities and rural areas, so apparently  
7 it came out and it's gone through that group.

8 CHAIRPERSON CLEMENT: And they have quite a bit  
9 on their plate. This was just one of the components.

10 Thank you very much.

11 Any other questions or comments?

12 Are we complete with that agenda item, Mr.  
13 Drosendahl?

14 MR. DROSENDAHL: Yes, I am.

15 CHAIRPERSON CLEMENT: Risk assessment and Tier II  
16 Modeling, I think you just covered that.

17 SAF monthly update, and that was going to be --

18 MR. GILL: So, is my understanding that the model  
19 is not working right now?

20 MR. MC NEELY: We think it is.

21 MR. GILL: The last I heard, they had problems at  
22 the beginning of the year with the operating system.

23 MR. MC NEELY: DEQ had problems. We switched  
24 computers in September, wasn't it, September, October. We  
25 all had new computer systems, and for some reason the

1 Excel wouldn't run on the computer system, but we fixed  
2 that, so externally I don't think that would have been a  
3 problem for external people. If they had it already, it  
4 should have been working.

5 It was just that our computer system got changed,  
6 and we are on a network so everything is -- IT can do  
7 something and mess up these current programs, but  
8 externally I don't know if anyone's having problems. I  
9 don't think they are.

10 MR. GILL: Thanks.

11 CHAIRPERSON CLEMENT: Thank you. We will go back  
12 to the State Assurance Fund update for Mr. McNeely.

13 MR. MC NEELY: State Assurance Fund update, I  
14 will start with the bar graph table. As you can see,  
15 every month, October, November, December, we've been  
16 reviewing more than we received. We received 77 in  
17 October, reviewed 109; 49 in November, we reviewed 102.  
18 Then in December, received 67 and reviewed 132. So we've  
19 been really pushing hard to get these determinations out  
20 the door.

21 And our pending applications, you can look at  
22 them, it's 183 are less than 90 days, 50 are more than 90,  
23 and 59 are greater than 180. A lot of these are on the  
24 ConocoPhillips, over 180. We had 300 slug that we had a  
25 settlement agreement, so we're still plugging through

1 those, so we're getting pretty close to getting those out  
2 the door and then really catching up a lot of these  
3 determinations.

4 CHAIRPERSON CLEMENT: Excellent.

5 MR. MC NEELY: Really, it's our SAF staff, they  
6 are very hard working people and they plugged through even  
7 Christmas and Thanksgiving. It's usually a slow time, but  
8 they really worked right through and tried to catch up.

9 And in terms of the appeals, we can look at the  
10 other form, it says State Assurance Fund appeals, we  
11 received 58 in December, informal, which is a little up.  
12 We made 23 determinations in December, and then -- but for  
13 the good news, formal appeals, we only received 10 in  
14 December and we made 23 determinations.

15 So, the formal appeals actually take more time,  
16 and we are handling those pretty good, too. So, I think  
17 in general SAF is doing okay if we keep our staff.

18 And I will just mention real quick, for the first  
19 six months of this year, we actually paid out \$13.5  
20 million. Last year for the whole year, we paid out 15  
21 million, so we're on a \$2,700 pace. And the year before  
22 that we paid out 11 million, so if you look 11 million two  
23 years ago, 15 million year last year, now this year we  
24 already paid 13.5 million out for the first six months, so  
25 that's good news, I think, because people are doing work

1 and we're processing the claims.

2       Then the next question that Mike O'Hara will have  
3 is how's the balance of the funds. You were thinking  
4 about it. It was 49 million at the beginning of this  
5 year. It had been 53 million on July 1st. Now it's down  
6 to 49, so we're actually spending more than we're taking  
7 in for the first six months, so we have a pretty good  
8 cushion.

9       CHAIRPERSON CLEMENT: Is there any chance that  
10 you will be rated with SAF Funds or any current  
11 legislature looking at that?

12       MR. MC NEELY: I've heard rumors that the  
13 counties were thinking about trying to do something about  
14 taking SAF money for highway funds, or something, but I  
15 have not seen any bills, and that was just like, I've  
16 heard it through the grapevine, people telling me that,  
17 but I really haven't seen anything formal.

18       And I'm not sure if they were trying to do that  
19 now or trying to do that when the SAF is sunsetted and try  
20 to get that penny to go to something else, so I don't know  
21 what their intentions are, but right now there is nothing  
22 that I am aware of.

23       CHAIRPERSON CLEMENT: Hopefully the bill will  
24 stay solvent and you will be able to meet your  
25 obligations.



1       Is there any other -- are there any other  
2 questions or comments for Mr. McNeely on this?

3       MS. MARTINCIC: I have a question, actually, for  
4 Mr. McNeely about the balance.

5       CHAIRPERSON CLEMENT: Surely.

6       MS. MARTINCIC: Is the agency going to provide or  
7 are you guys comfortable with what amount you need in that  
8 fund to, you know, essentially pay off the work that's  
9 being done since June 30th?

10      MR. MC NEELY: Yes.

11      MS. MARTINCIC: Are you guys projecting? Isn't  
12 the agency supposed to report to the legislature on that  
13 or is that in another year or two?

14      MR. MC NEELY: It's on September 2009, we have to  
15 do a report to the legislature in the Governor's office  
16 concerning the balance of the fund and how the progress of  
17 how the sunset's going.

18      So, currently we have about 1500 releases. Not  
19 all of those are SAF eligible, so we're still trying to  
20 think how many actually are SAF eligible and how many we  
21 have, but I think we have a couple of years to figure that  
22 out exactly how the balance will look.

23      MS. MARTINCIC: But is that -- that's only a  
24 one-year time frame from when everything is supposed to be  
25 paid out, though, that you make that report, isn't it?

1 MR. MC NEELY: Right.

2 MS. MARTINCIC: Yeah.

3 MR. MC NEELY: So that would give one year to  
4 make a legislative change if you needed it at that point.

5 MS. MARTINCIC: Right. Okay. Thank you.

6 CHAIRPERSON CLEMENT: Thank you.

7 Anything else for Mr. McNeely?

8 MR. MC NEELY: Okay.

9 CHAIRPERSON CLEMENT: Okay. This is your agenda  
10 item, Andrea -- Ms. Martincic, the Financial Subcommittee  
11 update, and I know you had a meeting regarding the ADEQ  
12 proposed legislation.

13 MS. MARTINCIC: Yes. So, the Financial  
14 Subcommittee met on January 4th, and we had about seven  
15 folks attending, and that includes Ron Kern and Tara Rosie  
16 from DEQ. And I thought we had a good meeting. We  
17 reviewed the proposed legislation again, and we went  
18 through the three sections that are being proposed, and  
19 there were concerns from the Financial Subcommittee about  
20 the proposed legislation. And they really are similar  
21 issues that were brought up in the initial meeting as  
22 well. There is -- the first issue is, I don't know how  
23 in-depth you want me to go into this. This is also  
24 another agenda item.

25 CHAIRPERSON CLEMENT: No. This is the agenda

1 item on the legislation, so I think we should go in as  
2 much depth as you did in the Financial Subcommittee.

3 MS. MARTINCIC: Okay. So, basically what we did  
4 is we just went through the proposed legislation, and the  
5 first section is related to 40-1019 E, and the issue there  
6 was that -- from the agency's perspective, what we  
7 understood in the meeting is that they feel there is a  
8 section within the statute that doesn't require the 10  
9 percent co-pay so they want to conform it to 1306  
10 language, and the attendees in the Financial Subcommittee  
11 meeting felt that that was not necessarily the case, that  
12 there are still political subdivisions, municipalities,  
13 volunteers and state leads folks that get 100 percent  
14 reimbursement and that this situation is basically an  
15 owner/operator acting as a volunteer because they're  
16 cleaning up additional contamination in order to move  
17 forward with their own situation.

18 So, I don't know if I'm categorizing that  
19 properly, but that's what my notes reflect. So, there are  
20 some issues about that, and I don't know if we want to see  
21 if any of the Commission Members, if we want to pause  
22 after each or do you want me to just go through all of it?

23 CHAIRPERSON CLEMENT: I think it would be good to  
24 pause after each and get any other comments or any  
25 response that the agency might have at this point.

1 MS. MARTINCIC: Okay.

2 MR. MC NEELY: Well, the response for -- under  
3 1019 E, what we're trying to do is, Senate Bill 1306  
4 required all volunteers to pay 10 percent.  
5 Owner/operators already are required to pay 10 percent.  
6 And as a compromise for the volunteers, Senate Bill 1306  
7 says if you don't want to pay the 10 percent, since you're  
8 not a liable party, you can go into State Lead and State  
9 Lead they will do the costs and the cleanup for you. They  
10 won't cost recover from you. You were still supposed to  
11 cost recover from whoever the responsible party is, if  
12 there is a liable party. If it's orphaned then you don't  
13 cross recover.

14 But one thing we noticed is shortly after Senate  
15 Bill 1306 was under 1019 E, which is not the SAF portion,  
16 the SAF portion says you won't take 10 percent, but this  
17 was talking about liability when you have multiple  
18 owner/operators and you have liability allocation. It  
19 talks about you can get 100 percent coverage. It was  
20 basically treating you as a volunteer under 1019 E.

21 So, we were looking at it like saying, well, the  
22 SAF portion of our statute says they will take 10 percent,  
23 but we forgot to fix this in Senate Bill 1306. We just  
24 tried to make a conforming change and say, everyone pay 10  
25 percent across the board, because if people that aren't

1 even liable to pay 10 percent, the assumption would be  
2 everybody should pay 10 percent across the board.

3 So, it's really a basic change. As far as we  
4 know, there is only about, that I'm aware of, about three  
5 sites that actually have this. There may be more that I'm  
6 not aware of, but it's not a huge problem. It's just  
7 mainly a conforming change.

8 CHAIRPERSON CLEMENT: Any other comments or  
9 questions about that issue?

10 Anything else on that particular issue, Andrea --  
11 or Ms. Martincic?

12 MS. MARTINCIC: No, not really.

13 So the next section was dealing with 49-1052, and  
14 this was the section where ADEQ wants to change the policy  
15 so that essentially, following statute, that you could  
16 only submit one application per month per facility  
17 regardless if there is multiple leaks.

18 And I'd say we spent probably the bulk of the  
19 time on this one and the final one, but the concern was  
20 that that's going to be difficult for the small  
21 owner/operators and that, you know, everybody is just  
22 getting used to these new applications that just came out,  
23 and then some of the service providers were concerned that  
24 also to adjust the cost ceilings in application  
25 preparation, so, there is, you know, there is an issue

1 there.

2 And there is a little bit of talk in the meeting  
3 about trying to maybe find some kind of middle ground  
4 number that maybe the 5,000 maybe, you know, there could  
5 be something done there, or to potentially also alter the  
6 application if that would help the situation.

7 So, a lot of time was spent in the meeting trying  
8 to better understand as well where ADEQ is coming from on  
9 some of the items to find out -- better understand what  
10 the problem is to know if this is really going to be a fix  
11 or not.

12 CHAIRPERSON CLEMENT: And I do have some  
13 questions also about that. If you have multiple work  
14 plans per release, can you put multiple costs into a  
15 single invoice or do those have to be separate invoices  
16 for each work?

17 MR. MC NEELY: The way it is now, you have to  
18 submit two applications per work plan, but what we're  
19 trying to do to remedy that is two things: We want one  
20 work plan per facility. We don't want to have multiple  
21 work plans, so we will pay for combining those work plans  
22 to have one work plan.

23 And, two, we changed the language. Rather than  
24 say one application per month, we said one application per  
25 calendar month, so that way you can submit an application

1 at the end of the month. If you had work going out pretty  
2 much the same time that you that submitted the next  
3 application at the end of the next month, so you don't  
4 have to wait 30 days between applications, you could just  
5 do a calendar month.

6 But what we'd like to do -- there is only a  
7 handful of sites, I think, that have a couple of  
8 applications. Some may have like an O&M, and another one  
9 may have groundwater monitoring. What we're trying to do,  
10 and that's one reason why we actually -- in the new rule,  
11 we gave a form to terminate work plan, because we have  
12 hundreds of work plans that have never been terminated.  
13 They're not being used, but they're not being terminated  
14 either, because we have no authority. So now we're trying  
15 to go through and clean up our data base and our work  
16 load, saying how much do we actually have out there that  
17 is supposed to be done, or how much is our liability out  
18 there, trying to combine these work plans into one. It's  
19 a lot more efficient.

20 MS. MARTINCIC: Phil, is the speaker near you  
21 because you keep cutting out when you're speaking?

22 CHAIRPERSON CLEMENT: We're moving it a little  
23 bit closer to Phil.

24 MS. MARTINCIC: Okay. I'm sorry. I can hear you  
25 fine, but whenever Phil's talking, it cuts out.

1 MR. MC NEELY: Okay.

2 CHAIRPERSON CLEMENT: I think, could you just  
3 state real briefly what you just said?

4 MR. MC NEELY: Andrea, what we're trying to do  
5 is, there is only a handful of sites that, I think, have  
6 multiple work plans on it, so what we're trying to do is  
7 allow people to combine those work plans and pay for some  
8 combination of the work plans.

9 Plus, we added in the language after the first  
10 meeting and someone raised that concern, we put in  
11 calendar month to make it more lenient where you could  
12 submit an application at the end of the month and then  
13 submit one at the beginning of that month, and doesn't  
14 have to be 30 days a part, just to handle that situation.

15 MS. MARTINCIC: Okay. So you're not looking at  
16 the number?

17 MR. MC NEELY: Well, I really haven't gone into  
18 our rational. If you want me to, I can tell why we are  
19 trying to do this.

20 CHAIRPERSON CLEMENT: That would be very helpful.

21 MR. MC NEELY: What we've done is we went through  
22 -- it seems like we were spending most of our time on a  
23 handful of sites. We went through our database and we  
24 counted up on nine facilities in a 16-month period we had  
25 over 310 applications, and about 70, 80 percent of our



1 appeals are on those nine facilities.

2       We have six and seven applications a month on the  
3 same facility. It's not like holding -- it's not holding  
4 invoices, it's splitting invoices. And I think a lot of  
5 that had to do with a couple of things. One is 10 percent  
6 co-payment requirement by Senate Bill 1306, and another  
7 thing, we can't really do our statutory requirement to  
8 figure out if the work was actually done technically and  
9 reasonably and is it cost effective, because everything is  
10 split up for the same invoice, split all over the place,  
11 so it's causing appeals, it's causing a lot of frustration  
12 of our staff because we don't know what's going on, so we  
13 said, what is going on with this. We evaluated it. It  
14 was 22 percent net time frame, less than 1 percent of the  
15 facilities was 22 percent of our applications and about 70  
16 to 80 percent of our appeals.

17       We just said, that is not good government. We  
18 are ignoring the other 99 percent of our facilities, and,  
19 really, if we don't focus all of our time on SAF, we can  
20 actually move resources to actually start on project  
21 management, and it's the same people. We all have -- we  
22 are all in the same group, the same funding, so the less  
23 we can spend in SAF appeals and administration, the more  
24 we can spend on technical review and facility meetings and  
25 site visits and writing MNA rules and things like that.

1        So, we just said, okay, once a month is what most  
2 people get billed for electric bills, mortgage payments,  
3 rent, credit cards is once a month. Once a month should  
4 be -- you'll actually get your money quicker because we  
5 will have less appeals, less time trying to figure out  
6 what's happening. So, if someone submits an invoice once  
7 a month, you will get paid more quickly rather than having  
8 the invoice split into six different ways and submit it  
9 six different times.

10       So, that was our rationale. We really haven't  
11 had a whole lot of real opposition to it, just a couple of  
12 consultants and a couple of people in Holbrook, but,  
13 besides that, I really haven't heard a whole lot, maybe  
14 one more person. Besides that, though, no one else.

15       MS. FOSTER: Madam Chair, I raised opposition to  
16 this back when you had the open meeting, because if I have  
17 a consultant who I want to work on my remediation and then  
18 twice a year put SAF applications together that might  
19 cover a couple hundred thousand dollars, I don't want to  
20 submit them on one application. I want to submit them on  
21 multiple applications, so by fixing DEQ's problem on nine  
22 sites, it's hurting other people who manage their sites  
23 differently.

24       I could submit three applications in one month  
25 and, if this rule gets past, I cannot. I have to wait

1 three months to make that submittal. So I think it's  
2 harming some individuals who manage their projects  
3 differently. To fix a problem for nine facilities and  
4 hurt other people, I would not recommend it. Thank you.

5 MR. MC NEELY: I would like to respond.

6 CHAIRPERSON CLEMENT: Please, Mr. McNeely.

7 MR. MC NEELY: Yes. And my response to that, Ms.  
8 Foster, would be just change the way you manage, because  
9 right now we have 1 percent of the facilities that occupy  
10 20 percent of our time. If we had 5 percent of the  
11 facilities that did that, we would be overloaded. And  
12 what I'm worried about is when 2010 starts coming around,  
13 we might start getting a lot more applications, a lot more  
14 work being done, so there would be a time crunch. We  
15 would be -- what if 10 percent did that, we would have to  
16 have a \$15 million admin cap to hire 50 new staff. It  
17 would not be workable.

18 So, to me, it's not a major inconvenience to do  
19 applications every three months rather than every six  
20 months. It's not -- to me, it seems like in terms of  
21 efficiency in government and what we're trying to do is  
22 be efficient in the way we run this program. It's just  
23 not a good thing to allow, especially if 2 or 3 percent of  
24 the facilities did it, our program would coming to a  
25 screeching halt, basically, we would be overloaded.

1       CHAIRPERSON CLEMENT: The one problem I see is  
2 the small owners and operators, to carry money multiple  
3 months is a big hardship and I'm a small firm. It would  
4 be a hardship for me if I had to do that.

5       The idea of combining work plans potentially is a  
6 good idea, but there has got to be some way to phase that  
7 in or something if you are going to hold to one  
8 application per month.

9       You know, my suggestion would be to consider  
10 perhaps two, so that if you have multiple activities,  
11 particularly on small owner and operator sites that don't  
12 have the capital to carry large costs over time, that that  
13 second application could hopefully pick up the additional  
14 costs, especially where it's a remediation site and the  
15 high costs of fuel where you've got high costs for power  
16 and rental equipment and stuff, and then you have on top  
17 of that other obligations. You know, even carrying  
18 \$10,000 for multiple months is a lot of money for small  
19 businesses.

20       MR. MC NEELY: But, Ms. Chair, we're not asking  
21 to carry money for multiple months. This is -- at the  
22 most, if you submitted two applications, one in the middle  
23 of the month, we're talking about two weeks, but our  
24 response would be, it would be probably quicker, you're  
25 getting paid quicker, because they are splitting costs and

1 it's really causing problems to figure out what's  
2 happening when you split invoices.

3 MS. MARTINCIC: Can that be corrected with the  
4 applications, maybe? That's what we were trying to figure  
5 out possibly in the Financial Subcommittee meeting.

6 MR. MC NEELY: I think we've changed  
7 applications. I think we are about as efficient as we can  
8 get it. Right now, it's an issue that we need to deal  
9 with, and I believe it's very reasonable, once a month I  
10 think is very reasonable.

11 CHAIRPERSON CLEMENT: So, let me just do a  
12 scenario just so that I understand more clearly.

13 I'm a small owner and operator, and I've got an  
14 active remediation system that costs me approximately  
15 \$30,000 a month, and on top of that, you come back to me  
16 and said, gee, that's great, but we found contamination  
17 with another site adjacent to your property, and it might  
18 be yours, and we need to do additional investigation.

19 What happens, then? How do you combine work  
20 plans in a scenario like that? How would you deal with  
21 that on a financial statement?

22 MR. MC NEELY: That's a site specific. Depends  
23 if the work plan has contingency borings, things like  
24 that, but, otherwise, most -- most work plans are really  
25 only -- most parties are not doing work plans. They're

1 doing -- they do the work and you reimburse them. Most of  
2 them do. I think we only have, well, under a hundred out  
3 of 700 facilities, so I can't really answer the site  
4 specific, but it's not going to be that big of an issue.  
5 We're not going to have people being harmed.

6       We actually went through it, and even the City of  
7 Phoenix -- we haven't seen multiple applications being  
8 submitted. I know a lot of people have said they want to  
9 do it and they will do it maybe in the future, but it's  
10 something that doesn't -- it's a rare, rare occurrence,  
11 except for a handful of facilities.

12       CHAIRPERSON CLEMENT: But it seems to me, Mr.  
13 McNeely, that the handful of facilities aren't submitting  
14 two applications, they're submitting a plethora of  
15 applications which are causing the problem.

16       So you are apparently, at least during this  
17 discussion, wedded to the one application per month idea.  
18 There doesn't seem to be much flexibility in that side of  
19 the proposal; is that correct?

20       MR. MC NEELY: Well, yes and no. Yes, we are  
21 wedded to it, but we did change it to a calendar month to  
22 help out here, so you don't have to wait 30 days. And we  
23 are also trying to compromise, really, paper work plans.  
24 And we've been trying to do that for a long time,  
25 contacting them about the work plan, saying, are you using

1 both of these, give us a new work plan.

2 And we're trying to do a lot of facility  
3 meetings, actually meeting with everyone saying, what  
4 exactly do you have left to do, what do you want to do,  
5 why don't you do a work plan instead of all this, because  
6 we're trying to get ready for the work plan.

7 So, I think we're doing a lot of internal and  
8 really outreach trying to get this to go smoothly. Even  
9 if it gets past, it will be August, so we have seven  
10 months to make sure everyone knows and gets their work  
11 plans in.

12 CHAIRPERSON CLEMENT: Mr. Gill.

13 MR. GILL: I was wondering something that is not  
14 being discussed, is that the -- what Mr. McNeely has said,  
15 it is assuming that when these applications are turned in,  
16 they're going to be approved, so they're paid back right  
17 away, so that they're not holding this funding, but that  
18 isn't necessarily the case. They could be holding these  
19 for months, then it backs up because they've had to assume  
20 the loan. I mean, you know, it's all site specific,  
21 obviously, but that's what I see.

22 I haven't seen very, very seldom do they submit  
23 an application and boom it's paid. There is always some  
24 little thing wrong that holds it up, then there is the  
25 process of going in and appealing, or whatever, or a

1 settlement meeting, whatever, it always extends, and now  
2 this is just compounding as far as more operators holding  
3 onto this cost.

4 CHAIRPERSON CLEMENT: Ms. Gaylord.

5 MS. GAYLORD: Just to the issue of small  
6 owner/operators, because it's been raised so often here.  
7 I don't represent all small owners. I only represent a  
8 handful, but all my clients are small owners. And for  
9 what it's worth, I did talk to each of them. None of them  
10 have had to submit more than 12 applications a year, so  
11 I'm not at all disputing that it is an issue for larger  
12 facilities, like the City of Phoenix, which has a very  
13 challenging project load there.

14 But I can only add to the discussion that my  
15 small owner/operators have never had to submit more than  
16 12 applications a year or submit more than one application  
17 a month.

18 MR. O'HARA: Madam Chair, I don't know if the  
19 City of Phoenix would have a problem with 12 a year. That  
20 would be fine for you, wouldn't it? You do them all at  
21 one time in a batch, so would 12 a year be a compromise?  
22 Because it still solves your problem of getting only one a  
23 month and allows her to do three or four. Instead of one  
24 a month or 12 a year, solve both problems?

25 MR. MC NEELY: The main thing we're trying to



1 accomplish is limiting the amount of applications coming  
2 in the door, really, because -- and not only that, I would  
3 like to address Mr. Gill's comment, you know. Three or  
4 four years ago when Director Owens decided to unencumber  
5 all this money that was tied up in these work plans of  
6 work being done, people used to wait two years, three  
7 years to get money, and we unencumbered it. And then we  
8 had a backlog of a thousand who had to wait a year to get  
9 their money.

10       Now we're processing very quickly and now it  
11 sounds like we're talking, you know, well, if I submit an  
12 application in two weeks, you have to wait. We've got it  
13 down to years, to maybe multiple, multiple months, now  
14 we're arguing over weeks. It seems to me that, you know,  
15 what Mr. Gill was saying about it, if you don't get paid,  
16 that's always been the case, and the problem is, a lot of  
17 times we don't pay because we don't know what's going on  
18 and we're trying figure it out, so I think having an  
19 application with one invoice rather than submit multiple  
20 applications, you might get paid quicker is what my staff  
21 tells me and what I think, and less confusion.

22       CHAIRPERSON CLEMENT: What about that concept  
23 that Mr. O'Hara just talked about, could you have it  
24 either/or once per month or 12 per year eventually? Is  
25 that something the agency would consider?

1 MR. MC NEELY: I'd have to run that up the chain  
2 of command. This bill is already in the legislative  
3 process, it's a bill, so we'd have to go and get someone  
4 to sponsor it, change the numbers and see how we track it.  
5 It would solve the problem of -- it wouldn't necessarily  
6 solve the problem of people splitting invoices, then you  
7 could split it. But I don't know why they would do that,  
8 because then you would be limited. It might hurt somebody  
9 if they submit six in a month, then you might have  
10 11 months where you have to not submit applications.

11 But, I mean, that would solve the problem of --  
12 the fear that I have is that multiple applications could  
13 just bury us if every facility decided to do that.

14 CHAIRPERSON CLEMENT: Any other comments? We  
15 have -- and I will take -- we have a comment from Mr.  
16 Kelley from the floor if you would.

17 MR. KELLEY: I will bring this to you.

18 Three points on the background stuff that you and  
19 Theresa both said. Just in Phil's concern as we focus  
20 2010, what if everybody starts doing this and then what  
21 would we do, I think you need to take the flip side of  
22 that coin and recognize that by putting this barrier in,  
23 we're doing nothing but putting another barrier and  
24 causing another delay in corrective action at these  
25 facilities, and when we have three and a half years, less

1 than three and a half years to finish all of these  
2 facilities, any additional barrier is just unacceptable at  
3 this point.

4 In the life of a UST, and a LUST site, three and  
5 a half years is not enough usually to get it done. So  
6 every one of these changes now is just a further delay in  
7 corrective action and a further blow against our ability  
8 to close these sites before July of 2010.

9 The second point is, and I think Andrea, I don't  
10 know if she mentioned it or not, but idea that right now  
11 we're operating in a universe where you have the ability  
12 to submit an infinite number of applications, and the  
13 department wants to go from infinity to one. There has to  
14 be some number between infinity and one that's acceptable,  
15 that's workable, that's good government with all those  
16 other terms.

17 The final point would be this: Mr. McNeely cited  
18 a bunch of data about 9 facilities causing 20 percent of  
19 the time, and blah, blah, blah, but, I'm sorry, that's not  
20 beared out by these data that's presented here. There's  
21 absolutely no way that 9 percent of these facilities are  
22 doing this application submittal.

23 What I think the problem is, Phil, and I think  
24 you know, you are taking data from a year and more back  
25 where that may have been the case a year or so back.

1 That's not the case today. So we're making a legislative  
2 fix for a problem that existed a year ago that doesn't  
3 exist today, number one.

4       Number two, many of these remediation projects  
5 are being pushed into an excavation, dig-and-haul type of  
6 remediation scenario. The cost for one of these  
7 remediation jobs can be \$100,000 of landfill bills that  
8 has to be incurred within two, three, four-week time  
9 periods. That is staggering for a small business owner to  
10 try to handle without financing, and the whole point is  
11 they have to finance that and they have to finance that  
12 and pay interest charges, so obviously it's to their  
13 interest to reduce the time carrying that they have to pay  
14 interest charges on.

15       So, the issue, I think, that the data of nine  
16 facilities causing all of this use of SAF time, I don't  
17 think it's borne out by this data here, and I think before  
18 we can start making decisions on the data, I'd like to see  
19 a little more clarification of this data, how nine  
20 facilities could be doing this. That means that everybody  
21 else in the State of Arizona is doing nothing on their  
22 site? That doesn't bear out by this data. That's not  
23 supported by this data, which means that we're placing  
24 that on data that occurred a year and a half ago which is  
25 when we were doing a bunch of dig-and-haul jobs. So,

1 statistics can be used many ways. If we are going to make  
2 decisions based on statistics on that, the Policy  
3 Commission needs to get a lot of more clarification on the  
4 statistics they use. Thank you very much.

5 I'm sorry, Madam Chairman, I did have one final  
6 question about this agenda item. Is the Policy Commission  
7 going to issue some sort of a recommendation to the  
8 legislature on this bill; and, if so, how are we going to  
9 make that happen between the time of our next meeting is  
10 not until February 28th, and this bill has obviously been  
11 introduced and will be calendared for committee this week,  
12 the time frame issue is very real, and if you could give  
13 us some feedback on how we might address that time frame  
14 issue?

15 CHAIRPERSON CLEMENT: Thank you, Mr. Kelley.

16 Any other comments from the audience at this  
17 point in time on what we've covered so far on the bill?

18 If not, Andrea, do you have additional comments  
19 on that particular point or do you want to move on to the  
20 other points that were addressed?

21 MS. MARTINCIC: Yeah. There is just one other  
22 point, which was No. 2 issue. So, the last section of the  
23 proposed legislation, that was a technical appeals panel,  
24 and it's basically the committee felt that the language is  
25 narrowing the scope of the technical appeals panel in what

1 they're able to speak to the judge about. They're sort of  
2 basically narrowing their definition of technical, if I  
3 remember accurately.

4       So, there is a discussion about that, and I think  
5 that DEQ expressed to the Committee that they feel that at  
6 times the technical appeals panel is going all over the  
7 place during the hearings and that this might help keep  
8 the group more focused or provide them with more specific,  
9 I guess, charge.

10       And it was discussed in the meeting as whether  
11 that's really the role of the agency or should the Judge  
12 be doing that, so we just kind of had an interesting  
13 discussion on this one. But I don't know how others feel  
14 about it, about kind of narrowing the possibility to weigh  
15 in on various issues.

16       CHAIRPERSON CLEMENT: Mr. McNeely?

17       MR. MC NEELY: Yes. Now, what this is going to  
18 do is, it's really not narrowing the issue, all it says is  
19 we have an technical appeals panel, but we've never  
20 defined technical. So, when it talks about they shall  
21 provide technical written findings or technical findings  
22 of fact, what this does is define what technical is. It  
23 means, since we have PDs and RGs on the TAP, it just said  
24 technical findings or technical matters means scientific  
25 conclusions that are related to hydrology, hydrogeology or

1 engineering activities. It wasn't defined before.

2       So, we've seen it with -- it's not just DEQ. I  
3 know other people in front of the TAP said it would be  
4 nice to have a definition of what technical is. Now we  
5 have a definition, and the reason they are on this TAP,  
6 RG, is defined what they have.

7       So, it's really sort of a minor issue, and the  
8 TAP will do what they want to do and ALJ controls the TAP,  
9 and it's up to the ALJ how he controls the TAP, but we  
10 just feel like it needs a little bit more for the ALJ to  
11 see what technical actually is meant.

12       CHAIRPERSON CLEMENT: What is the fundamental  
13 issue here that you are trying to address, because it's  
14 not clear to me?

15       MR. MC NEELY: On just a couple of TAP jobs, it  
16 just looks like based, I think, on both sides of the  
17 floor, the TAP was a little confused on what they were  
18 trying to do. They were just talking about things that  
19 necessarily weren't technical policy. They went off on  
20 tangents, law matters, and we've been talking about it  
21 internally, just like maybe we can have like training or  
22 talk to ALJs or maybe having open statements saying this  
23 is what the role is. But technical really wasn't defined.  
24 We thought maybe it would be easier for the ALJ to  
25 understand what the TAP is supposed to do by putting a

1 definition for technical.

2 I don't know if this will have any impact or not,  
3 but you really can't limit what people talk about once  
4 they start going, but this might give more guidance. I  
5 talked to Phil Schneider about this. He thought it was a  
6 good idea. He said, yeah, why don't you define technical,  
7 so --

8 CHAIRPERSON CLEMENT: So the TAP manager himself,  
9 Mr. Schneider, has no problem with this language?

10 MR. MC NEELY: He does not.

11 CHAIRPERSON CLEMENT: Any other technical appeals  
12 panel members have weighed in on this, do you know?

13 MR. MC NEELY: So far, no.

14 CHAIRPERSON CLEMENT: Any other comments on that?  
15 Mr. Gill?

16 MR. GILL: Madam chair, at the first meeting, I  
17 expressed my concerns. First off, I don't think you can  
18 define technical, especially in the UST program where we  
19 have always been fighting with where, quote-unquote,  
20 technical stops and policy or SAF, whatever, starts.

21 And I think that -- the problem that I see here  
22 is that coming up with a definition, I think that the TAP  
23 actually ended up a lot of their arguments from now would  
24 be whether or not this meets the technical definition.

25 And because I'm just trying -- I was sitting here



1 looking at these trying to think of an example, but, I  
2 don't think there has ever been a fine line in the UST  
3 program where policy and technical and SAF and payment  
4 issues starts and stops. I mean, it's so interwoven, I  
5 just can't imagine that -- and I understand from the  
6 earlier explanations that DEQ didn't want the TAP members  
7 discussing policy.

8 Well, I remember some TAP hearings that new  
9 policy should have come out of it and I think did, and  
10 that's exactly the point of the issue. If there is things  
11 that are being done that don't make sense technically or  
12 financially, they're interwoven and something needs to be  
13 changed.

14 So I think they're going to end up arguing more  
15 now in the TAP hearings, well, that's a technical issue,  
16 no, no, that's a policy issue, and I think it's going to  
17 cause more problems.

18 CHAIRPERSON CLEMENT: Mr. McNeely.

19 MR. MC NEELY: It's not that the agency doesn't  
20 want TAP talking about policy. If it's a technical matter  
21 or if it's a scientific conclusion, you know, that's fine.  
22 But there is a difference. The ALJ, Administrative Law  
23 Judge, is supposed to handle the legal issues and the TAP  
24 is supposed to give advice on technical matters, so,  
25 regardless, if you say they intertwined, there is a role.

1 ALJ does legal issues, TAP does the technical. We don't  
2 define technical even if it's difficult to do, I think  
3 it's nice at least to have it in there what it means.  
4 They can interpret it any way. We can't control how the  
5 TAP interprets it or how an ALJ interprets it, but at  
6 least it's a definition. The definition is very broad.

7 CHAIRPERSON CLEMENT: How does cost effectiveness  
8 fit? Because often, or at least I was on the TAP panel,  
9 and it seemed like cost effective and technical were so  
10 interwoven that, yes, technically, you could do 800  
11 borings, but was that the most effective -- you know, more  
12 data is always better for a scientist, so how does  
13 technical and cost effective weave together, then, using  
14 this definition?

15 MR. MC NEELY: I don't think it has an impact on  
16 it using that. But, you know, there is always -- you have  
17 the cost effectiveness with the cost ceilings. If you do  
18 a task that's greater than your cost ceiling, then that's  
19 not cost effective. Then you always have, is it -- I  
20 think the reasonable and necessary part, is it really  
21 necessary. It may reasonable to bore, but is it necessary  
22 to put 15 in.

23 I think that's where the technical expertise  
24 comes into play, saying, well, you know, they did  
25 reasonably approach putting borings in, but you really

1 didn't need that many, it wasn't necessary. Then the  
2 costs follow that argument.

3 So the TAP would say, I think 10 borings is what  
4 you need and not 15, and then, you know, the ALJ would say  
5 don't pay for those 5 borings or don't pay over the cost  
6 ceiling for those 10. I mean, everyone knows that, but  
7 there is a separation.

8 CHAIRPERSON CLEMENT: I can see that.

9 Any other comments or questions from Mr. McNeely  
10 on that point?

11 Andrea? Ms. Martincic?

12 MS. MARTINCIC: Yes.

13 CHAIRPERSON CLEMENT: Anything else you want to  
14 add on that point?

15 MS. MARTINCIC: Well, I think what you are  
16 getting at is the concern there is that the TAP will no  
17 longer be able to comment as much on the cost  
18 effectiveness issues, and it is interwoven, and I think  
19 that's a concern, and that it's narrowing, somehow  
20 narrowing the scope now of the TAP.

21 CHAIRPERSON CLEMENT: Did your group have a  
22 recommendation for the Policy Commission in terms of any  
23 formal comments that we would want to submit?

24 MS. MARTINCIC: I don't remember that we actually  
25 got to that point. We sort of went over the issues and we

1 were going to present them to the Policy Commission, and  
2 then my thought was to get feedback from the Policy  
3 Commission Members.

4 We have a next meeting -- our next meeting is  
5 scheduled for February 1st, which is right around the  
6 corner, so if that's something that the Commission wants  
7 the Committee to consider or work on, that can happen.

8 CHAIRPERSON CLEMENT: Is there any impetus from  
9 the Policy Commission to work towards formal comments on  
10 this rule package?

11 MS. MARTINCIC: It's legislation.

12 CHAIRPERSON CLEMENT: Excuse me. Thank you. On  
13 this legislation?

14 The only -- personally, the only point that I  
15 would want to put forward is the one per month versus, and  
16 I think the compromise that Mr. O'Hara suggested, 12 per  
17 year, provides more flexibility for -- again, I am  
18 concerned about the small folks carrying a lot of money,  
19 and they might be able to manage their systems a little  
20 bit more easily.

21 Also, potentially, we could put a recommendation  
22 in regarding this ability to consolidate work plans so  
23 that that notice or information would go out to the  
24 regulated community so they would have time to consolidate  
25 work plans, have them approved before the August 2007

1 implementation date.

2 Those are my thoughts, and let's operate floor to

3 other thoughts people may have.

4 MR. MC NEELY: I just have a thought. If you're

5 trying to say 12 times per year, you could go beyond that

6 and go three times a quarter, I don't know. I worry about

7 some consultants sending 12 applications and then leaving

8 that client high and dry, and they have an 11 months of no

9 more application submittals.

10 If you want to do that, you could almost do six

11 times every six months or three times a quarter or twelve

12 times a year if you wanted to go that route, but I'm just

13 bringing that up.

14 CHAIRPERSON CLEMENT: Mr. O'Hara, do you have a

15 comment on that?

16 MR. O'HARA: Well, no. I see both sides of the

17 issue. I think, unfortunately, the fund was never set up

18 to be a payroll department, pay every 30 days. It was

19 never really set up for the small owner/operators to get

20 funded, so, like Mr. Kelley said, they do have to find

21 their own financing. And there is a true cost to the

22 department to process an application. And the department

23 processes their own applications now, but in the past they

24 had a contractor. There is a true cost, 4 to \$500 per

25 application, so, I mean, there has got to be a balance

1 between how frequently you can submit an application.

2 And in the past, we did have some guidance on  
3 that. I think it was every three months was the most  
4 frequent you could do it and reach at least \$10,000. Of  
5 course, that wasn't very beneficial to a small  
6 owner/operators.

7 So, I think this one a month is, in my opinion,  
8 fairly reasonable. I can't bill my clients more than once  
9 a month. Nobody does. And I think there is also a  
10 benefit if they do package them into one application, they  
11 are probably going to get processed quicker. It takes  
12 them a lot longer to process seven or eight applications  
13 as opposed to one, so it may truly benefit the  
14 owner/operator to submit one instead of ten.

15 CHAIRPERSON CLEMENT: Mr. Gill.

16 MR. GILL: I just have some -- I guess the  
17 concern I have is, as we approach the deadline for  
18 submitting all applications, we may have to change the  
19 rule or legislation, because there is always people that  
20 are going to put it off until the end and start trying to  
21 do all their work and they need to submit applications and  
22 they are limited to 12. And they still -- the deadline's  
23 coming, they still have applications they can't submit  
24 because they are limited to 12 a year.

25 And the work -- the work doesn't come in the same

1 way that the bills will come in from subcontractors, from  
2 the -- in something like that, in a nice, you know, simple  
3 process. I mean, it comes in. You've got to be prepared  
4 for varying applications, and I just -- I don't know, I  
5 just have problems with limiting the number of  
6 applications. I mean, I understand their problem and I  
7 understand -- I think it can be worked out to where, you  
8 know, if the issue was sending in multiple applications  
9 with breaking them all up, I think that can be worked out  
10 in legislation. I don't like putting fixes in  
11 legislation.

12 CHAIRPERSON CLEMENT: Mr. Smith?

13 MR. SMITH: I have to agree with Mike O'Hara.  
14 You know, it was not set up that way. I think there are  
15 compromises we can come to, and I also agree with Hal,  
16 that is, is the legislature the right place to fix it.

17 CHAIRPERSON CLEMENT: Mr. Findley?

18 MR. FINDLEY: I have no comment.

19 CHAIRPERSON CLEMENT: Ms. Gaylord?

20 MS. GAYLORD: Actually, I agree with Mike O'Hara.  
21 I think that just based on my limited experience, I  
22 haven't seen a problem with managing the expenses to  
23 submit the applications on a once-a-month basis. I  
24 certainly would not oppose a compromise that allowed 12  
25 applications a year or some other compromise that made it

1 easier for owner/operators but accommodated the overriding  
2 concern we all have to have for the efficiency of the  
3 program.

4 CHAIRPERSON CLEMENT: Ms. Gaylord, I'm sorry -- I  
5 just did Ms. Gaylord.

6 Sorry. Ms. Foster.

7 MS. FOSTER: Nothing else.

8 CHAIRPERSON CLEMENT: No further?

9 MS. FOSTER: No further.

10 CHAIRPERSON CLEMENT: Is there impetus to provide  
11 formal comments here? Should I poll you all again? It  
12 seems to me that we have a split Commission on this issue.

13 MS. MARTINCIC: If the Commission wants, I mean,  
14 at the next Financial Subcommittee meeting, we could talk  
15 more about whether there is some type of middle ground on  
16 the second issue. That seems to be the one that has the  
17 most concern among Commission Members and report back to  
18 the Commission and take that route.

19 CHAIRPERSON CLEMENT: I don't think we're going  
20 to move it forward here any further than we have at this  
21 point. I personally would be in support of a middle  
22 ground or a way to make it a little bit more flexible for  
23 the owners and operators.

24 I agree with the agency regarding, they need  
25 efficiency, they shouldn't have to split invoices that



1 didn't need to be split. You know, there is some kind of  
2 a happy place here that allows people to minimize the  
3 amount of money they have to carry but also allows the  
4 agency to operate in a more efficient way.

5 MS. MARTINCIC: Right.

6 CHAIRPERSON CLEMENT: But I don't -- I didn't  
7 hear a -- I don't think we have a consensus here would be  
8 what I would say.

9 So, do we want to task the Financial Subcommittee  
10 with massaging this issue a little further and potentially  
11 presenting us an option?

12 MS. MARTINCIC: I think it's the stakeholders  
13 that's at the meeting, they want to go that route. I  
14 think it depends on if there is enough interest in me  
15 doing that.

16 CHAIRPERSON CLEMENT: Don't all speak at once.  
17 Mr. O'Hara.

18 MR. O'HARA: I would just say based on these  
19 three issues, unless I'm misreading the Commission, that  
20 probably the stakeholders might -- I mean, they're already  
21 going straight to the legislature. I don't know that they  
22 are going to get a consensus on these three issues. Maybe  
23 I'm wrong. If there is, then we can vote for one, but I  
24 don't know if we're necessarily --

25 MS. MARTINCIC: Well, I would propose to the

1 Commission at my next Financial Subcommittee, we will  
2 continue to evaluate this legislation and I will try to  
3 get feedback from owner/operators and volunteers and  
4 stakeholders and find out if that second issue related to  
5 the applications is worth trying to find a further  
6 compromise with DEQ.

7 CHAIRPERSON CLEMENT: Okay.

8 MS. MARTINCIC: And if there is, I will bring  
9 that back to the Commission, and then the Commission  
10 Members can decide at that point if it's something they  
11 want to take action on.

12 CHAIRPERSON CLEMENT: That sounds appropriate.

13 We have a question from Mr. Findley.

14 MR. FINDLEY: Do we have any reading on the  
15 status of the bill? Has it been submitted? It's  
16 submitted, but has it been assigned to a committee or  
17 what's the status?

18 MR. MC NEELY: I think it was -- I just got this  
19 yesterday, so I think it was dropped yesterday. And I  
20 don't know if it's been assigned to a committee yet but  
21 will go to the senate, I believe Natural Resources  
22 Committee, which I believe meets on Thursdays, so I  
23 haven't seen the agenda -- I don't know if it's on  
24 tomorrow or not. I haven't seen it yet, but I would  
25 assume it would be on, if it's not tomorrow, the next time

1 the committee meets, and I will try to e-mail out

2 everybody on the Commission when it's on.

3 CHAIRPERSON CLEMENT: So, would we be timely, I  
4 guess, if we follow a February 1st and then a subsequent  
5 Policy Commission meeting?

6 MS. MARTINCIC: Sure. I mean, it's got to go  
7 through the process. I would be surprised if it's on a  
8 fast track.

9 CHAIRPERSON CLEMENT: So we have time.  
10 One thing that perhaps we could recommend, and I  
11 want to get some feedback is, your concept of paying for  
12 work plans to be consolidated into a single work plan and  
13 getting information out to the regulated community about  
14 that, is there a mechanism, like using the bulletin board,  
15 that we could make sure everybody has been well informed  
16 about that and what your process would be to do that?

17 MR. MC NEELY: We're currently sending letters  
18 out right now. We had 400 old SAF work plans that we  
19 think aren't being used and we're sending out -- I think  
20 we sent over a hundred letters out already saying, you  
21 know -- what we're saying is, this work plan hasn't been  
22 used in two years, the money's gone, the site's closed,  
23 we're terminating this, we will give you full appeal  
24 rights. It's just a process to let them know that it's  
25 happening.

1 But I think the other process would be, we're  
2 going through all of our work plans. So, we have 200  
3 facilities, what we'd like to do is directly send a letter  
4 saying -- it wouldn't be a termination letter, it would  
5 be, you have these two work plans, please combine them  
6 into one. I can't really force them to do that either  
7 because they may not care. They may say, well, I only  
8 submit one application every three months. I don't care.  
9 And at that point, that's fine. If they're submitting it  
10 the same month, they may want to submit it.

11 CHAIRPERSON CLEMENT: So, you have two processes  
12 in place. One is for those work plans that do not seem to  
13 be in action right now, anything going on, you are sending  
14 a letter saying terminate this work plan or let us know  
15 what you are doing right now.

16 MR. MC NEELY: Right.

17 CHAIRPERSON CLEMENT: And then the second case is  
18 where there are more than one work plan, you are going to  
19 send a letter to those facilities saying you have an  
20 opportunity to consolidate work plans, which the SAF will  
21 pay for, and let us know what your intentions are,  
22 basically?

23 MR. MC NEELY: Right. And we call people, too,  
24 we will call and say, hey, you have these work plans, so  
25 we're working it that way. So we're not just doing a

1 general mailing, because there is really not that many  
2 work plans. Most parties are doing reimbursements. There  
3 is no waiting for the money, so there is no waiting  
4 process to do reimbursement.

5 CHAIRPERSON CLEMENT: Mr. Gill, would you  
6 recommend that some notice go on the bulletin board or  
7 some other means of communication so this becomes a  
8 broader -- just so people are made aware of what your  
9 intentions are?

10 MR. GILL: I think just any outsource DEQ could  
11 do is helpful, because different stakeholders get their  
12 information different ways from DEQ. I don't know how  
13 many of them even know about the bulletin, but it wouldn't  
14 hurt putting it on there.

15 MR. MC NEELY: The critical parties would be the  
16 volunteers, because they have no work plans to do the work  
17 under 100,000, so those are the ones that we absolutely  
18 have to make sure that if they have some work plans they  
19 need to know.

20 But the other parties, if they could somehow make  
21 a reimbursement, we have the electronic reimbursement, we  
22 have a lot of processes that will help out.

23 MR. GILL: And I can send an e-mail to all the  
24 consultants to contact their clients and have them look at  
25 the board.

1       CHAIRPERSON CLEMENT: Okay. So, is our  
2 recommendation -- and I don't think we need to vote on it,  
3 that our recommendation is that Mr. Gill will send out an  
4 e-mail to his consulting group, Mr. McNeely will prepare  
5 or his staff will prepare something that would be a notice  
6 on the bulletin board to be referred to, and then you will  
7 continue your outreach with individual letters and  
8 telephone contacts; is that correct?

9       MR. MC NEELY: Before Hal said something, I'm not  
10 sure what you would say. I don't want you to send  
11 something out, combine all these things, so DEQ is paying  
12 for it, because that might have connotations.

13       MR. GILL: I was going to tell the clients to  
14 look on the bulletin board to look for notices.

15       MR. MC NEELY: Or they can contact us directly.

16       MR. GILL: Okay.

17       CHAIRPERSON CLEMENT: And then maybe you can time  
18 that so his e-mail doesn't go out before you have  
19 something on the bulletin board in a prepared statement  
20 form.

21       MR. MC NEELY: Okay. That sounds good.

22       MR. GILL: If you can let me know.

23       MR. MC NEELY: We will send you what we are  
24 saying.

25       CHAIRPERSON CLEMENT: That would be very helpful.

1 We're not trying to get ahead with this. We just want to  
2 make sure that if there are existing concerns and they are  
3 being addressed by DEQ, people are well informed of that.

4 Mr. Findley.

5 MR. FINDLEY: What would be the timing? If this  
6 did go through the legislature, what would the timing --  
7 would it take place immediately or would there be a 90-day  
8 --

9 MR. MC NEELY: Usually 90 days after it's signed  
10 into law, and usually all the DEQ bills always hang around  
11 until the last day of the session, so we're assuming May,  
12 early June, so it would probably in the August time frame.

13 MR. FINDLEY: Right.

14 MS. MARTINCIC: 30 days after session ends for an  
15 emergency provision.

16 CHAIRPERSON CLEMENT: 90 days after legislative  
17 session.

18 MR. MC NEELY: We have eight months to get this  
19 accomplished.

20 CHAIRPERSON CLEMENT: It just might be helpful if  
21 you got notice out now if you are going to have existence  
22 of this legislation that could be easily cleared up  
23 through your process, then it might make it just more  
24 simple for people to be informed.

25 MR. MC NEELY: Okay.

1 CHAIRPERSON CLEMENT: Any other direction,  
2 comment, decision on this? Okay.

3 So, just to summarize, there will be a February  
4 1st Financial Committee meeting. Any recommendations to  
5 the Policy Commission will be developed during that  
6 meeting, so we encourage the owners and operators who have  
7 this as an issue, to participate aggressively in that  
8 meeting.

9 And, secondly, there will be communication both  
10 from Mr. Gill's distribution list and Mr. McNeely's UST  
11 bulletin board regarding this issue, and they will  
12 coordinate the timing and the language so that we are not  
13 ahead of this and we are right in line with DEQ. Okay?

14 Anything else, Andrea -- Ms. Martincic on your  
15 Financial Subcommittee meeting?

16 MS. MARTINCIC: That's all.

17 CHAIRPERSON CLEMENT: And thank you very much for  
18 taking the lead on this and moving it forward.

19 Next agenda item is the Technical Subcommittee  
20 update:

21 MS. HUDDLESTON: May I suggest a break before we  
22 move on to the next agenda time?

23 CHAIRPERSON CLEMENT: Okay. We're going to take  
24 a short break until the next agenda item.

25 (A recess was taken at 10:25 a.m.; resumed at



1 10:37 A.M.)

2 CHAIRPERSON CLEMENT: I apologize, if you want to  
3 talk again, maybe any other comments you could come up so  
4 Andrea can hear them also.

5 We are on to the next agenda item which is the  
6 Technical Subcommittee update with Mr. Gill.

7 MR. GILL: We didn't have a meeting this month,  
8 primarily because what we've been waiting for was the  
9 definitions and discussions on the Tier II risk  
10 assessment, and so that was the, you know -- I have  
11 nothing to add there.

12 One issue did come up that I was asked to raise,  
13 and -- raise as sending it to the subcommittee for a  
14 discussion, and that is we're wondering if DEQ is changing  
15 policy now or if they are moving towards a direct vent for  
16 remedial systems.

17 And, you know, my understanding of the rule is  
18 that -- or the air quality rules is that you are indeed  
19 allowed a direct vent if you are below 40 tons a year and  
20 -- which almost all of them are. And so for one system  
21 that might be fine, but you're looking at multiple systems  
22 and my problem is that I doubt if any of the air quality  
23 people, county, state would agree with that regardless.

24 But I think if this is where where DEQ is moving,  
25 we need to discuss it and we need to get the county people

1 in there as well.

2 So, I just want to bring that up and see if it's  
3 something we want to move to subcommittee meeting.

4 CHAIRPERSON CLEMENT: What I've heard also, and I  
5 don't know what the factual basis is, but what I've heard  
6 is that there has been some impetus not to pay for air  
7 cleanup in remediation systems if the concentrations were  
8 less than 40 tons per year.

9 Now, that has been resisted by the agency in many  
10 a site in other programs, and the sites I'm most familiar  
11 with were not being regulated by the 40 tons, they're  
12 regulated by the hazardous air pollutant concentrations  
13 and mass emissions.

14 If this is an issue, I think it should be  
15 discussed in greater depth, perhaps.

16 Mr. McNeely.

17 MR. MC NEELY: Ms. Chair, this is not an issue.  
18 We're not saying that. We didn't change any policy. We  
19 want people to treat their air. We're an environmental  
20 agency. We don't want 40 tons of contaminants taken out  
21 of the soil and put into the air. We also don't want ten  
22 tons of benzene taken out and put into the air.

23 So, this is a site specific issue about, is it  
24 cost effective to move it to another site and then five  
25 months later put it back on the same Thermox system rather

1 than putting a blower with carbon. That's the issue. It  
2 has nothing to do with DEQ changing its policy, air  
3 quality changing its policy. In general, we want air  
4 cleaned up, we want it treated cost effectively through  
5 Thermox, and then it's down to Catalytic, and then down to  
6 carbon. That's our policy. That's the way we've always  
7 wanted it, and nothing is changed. And I've talked to  
8 some consultants and I've told them the same thing.

9 CHAIRPERSON CLEMENT: Mr. Gill, do you have a  
10 recommendation? You think this needs further --

11 MR. GILL: I just wanted it clarified is that the  
12 SAF is not looking at -- you know, because obviously  
13 direct vent would be more cost effective, and that's part  
14 of the way the rule is written. But if SAF is going to be  
15 saying, well, you know -- because that was the whole point  
16 of going from Catalytic -- going down from Thermox down to  
17 Catalytic down to carbon, because it is more cost  
18 effective, although I don't think it is, because the cost  
19 of all those change outs is much more costly than just  
20 keeping the system on there. That's what I've always  
21 found in remediating these sites.

22 But that was my understanding is that SAF -- and  
23 it wasn't saying you will do this or we will deny it  
24 because of this, but is direct vent more cost effective.

25 And if it's moving -- you know, we need to make

1 sure that it's not moving that way, because I know nobody,  
2 yourself included, would agree that direct vent, you know,  
3 should never be a reason for -- if it is cost effective,  
4 therefore, we're going to deny, you know, a treatment.

5 MR. MC NEELY: No. SAF is not running air  
6 quality policy or DEQ policy. It's a site specific issue  
7 on one site, and when a consultant says there are no VOCs  
8 coming out, that's why I removed the system. The question  
9 is, why did you put it back on. Is it cost effective to  
10 do that. That's the question. And it turns into this.  
11 It was a very good question, and we're not changing. We  
12 want people to treat their air. But if there is no VOC,  
13 carbon may be the way to go. If there is no VOCs, maybe  
14 you don't need a direct vent. Maybe that's okay, too.  
15 You know, we leave that up to the consultants and follow  
16 the air permit rules, but we are not denying treating air.  
17 We want air treated.

18 CHAIRPERSON CLEMENT: Any other questions? Yes.

19 MS. FOSTER: Madam Chair, we should also be  
20 thinking about Maricopa County regulations dealing with  
21 three pounds a day. When it's over, greater than three  
22 pounds a day, under my understanding it has to be  
23 permitted by the county, so I don't know how all of a  
24 sudden we are jumping to tons when we've got another, more  
25 restrictive requirement in this county.

1 MR. MC NEELY: Right. Well, there is different  
2 -- you know, Maricopa County has its own authority from  
3 EPA, so does Pima County, and so does Pinal County. They  
4 have their own authority.

5 DEQ, we do issue these portable permits, which  
6 you can operate in all three of the counties, so it  
7 depends on where you are and where you are getting your  
8 permit from, but you have to comply with the county laws,  
9 and if you are outside a rural area, outside of those  
10 three counties, you have to comply with the DEQ rules, so  
11 it depends on where you are.

12 CHAIRPERSON CLEMENT: Okay.

13 MR. GILL: I guess the only other thing I would  
14 add is that I again ask Joe to please move forward as  
15 quickly as you can on your definitions of what DEQ assumes  
16 a Tier II risk screen is compared to the risk assessment  
17 so we can start discussing again. I just know that has  
18 caused issues in the past, and I just would like to ask  
19 Joe to do what he can so we can have some Technical  
20 Subcommittee meeting to discuss those.

21 CHAIRPERSON CLEMENT: Mr. Drosendahl, do you have  
22 any anticipated time when you will be responding to Mr.  
23 Gill's concerns regarding those definitions?

24 MR. DROSENDAHL: No, just like the software, as  
25 soon as I can.

1 CHAIRPERSON CLEMENT: Can we ask that we be  
2 provided -- this has been going on how for many months,  
3 Mr. Gill?

4 MR. GILL: Probably since -- my last subcommittee  
5 was October.

6 CHAIRPERSON CLEMENT: So we're working on four  
7 months. Can we get a time frame perhaps, Mr. McNeely,  
8 when we could get a response on these issues?

9 MR. GILL: October 11th was the last meeting,  
10 that was the subcommittee meeting.

11 MR. MC NEELY: The issue is defining what a Tier  
12 II is and what a risk assessment is? I'm not really  
13 clear.

14 MR. GILL: Well, it has nothing to do with the  
15 model. The problem that we're having, and actually it  
16 came up in the meeting, in the discussion, is that it was  
17 obvious that what I and other consultants that were doing,  
18 quote, risk screens, was completely different from what  
19 DEQ was saying.

20 In other words, when they -- well, the easiest  
21 example is that when DEQ would do a risk screen on some of  
22 the sites that they were looking at, the simplest way to  
23 do that is to -- and the most conservative way is to take  
24 whatever concentration there is at the site behind  
25 concentration for benzene, and plug that into the models

1 for all of them, and if it passes that, then obviously it  
2 passes. And that's not a problem if indeed that closes  
3 the site.

4 Now, if you do that for a site and it doesn't  
5 pass, now you have to go back and do the entire thing  
6 again, putting in all -- what I do and what other  
7 consultants do when they do a screen is they put in all  
8 the data, and if it passes, it passes. If it fails, it  
9 fails.

10 But if you put in the highest concentration and  
11 it passes, and it passes or it fails, now you don't know  
12 where did it fail. You have to go back in and put in all  
13 the data again.

14 So, when we were getting denials on the cost of a  
15 risk screen, that's why we were getting denials, because  
16 it would take DEQ a very short period of time because they  
17 weren't going down and compiling all the data. They were  
18 taking the highest concentration, bomb, it's done, put it  
19 in. When other people would do it, they would go through  
20 all the data, find the appropriate data, put it in, put in  
21 all the concentrations, and, if it passes, it passes, and  
22 if it fails, then you knew it failed.

23 MR. MC NEELY: I think the issue gets back to  
24 money again. It's really not defining what a risk screen  
25 is and how much we going to pay to plug in data. And I

1 think the issue we've had is when our risk assessment or  
2 contractors do it, it takes a few hours to do some of this  
3 stuff. Then when we get a bill for 40 or 50 hours, our  
4 reviewers talk, how much does it take because we don't  
5 have a cost schedule. We have to make a reasonable and  
6 necessary evaluation. And when we hear, you know, our  
7 risk assessor does it, our contractor does it for X amount  
8 of hours, then we get something that's ten times more than  
9 that, that's when they start asking questions, well, what  
10 are you doing. It comes down to money again, and that's  
11 the problem, but I don't know if just defining that is  
12 going to -- because I think we are plugging all the  
13 numbers is, too.

14 MR. GILL: That's not what I understand.

15 MR. MC NEELY: Jeanene does. She plugs in  
16 everything. All right. I will look at that. A  
17 definition won't solve that.

18 MR. GILL: Well, but we have to be doing the same  
19 thing, in other words, if we're -- just what I explained.

20 MR. MC NEELY: Right.

21 MR. GILL: In other words, we need to make sure  
22 that we are doing apples to apples and not doing two  
23 completely different things that is constituted as a risk  
24 screen.

25 MR. MC NEELY: Right. But the plugging into the



1 highest concentration would only take a couple of hours.

2 MR. GILL: It isn't the plugging in, I agree.

3 The model is an hour, two at the most, but it's compiling  
4 the data and getting all the appropriate data, the most  
5 current date, that's what takes more time. That could be  
6 16 hours, 24 hours, depending on the complications, how  
7 complicated the site is.

8 MR. MC NEELY: Okay. I will look into that with  
9 SAF. I will look at some of the site specific issues that  
10 we have. Without looking at site specific issues, it's  
11 sort of difficult to come up with a --

12 CHAIRPERSON CLEMENT: Perhaps you could get back  
13 with us in terms of what you consider risk screenings for  
14 sure. I think that's pretty simple, you know, what you do  
15 and how that's evaluated, and then that may move us  
16 forward, because I don't think we need a definition of  
17 risk assessment.

18 MR. GILL: The other issue that we noted is that  
19 if you look at the rule and the cost ceiling, it's only --  
20 the only thing that's mentioned is a Tier II evaluation or  
21 risk assessment. The screen is never mentioned. And so I  
22 don't know if down the road if that's going to cause  
23 problems too, because the difference between a screen and  
24 a risk assessment is typically double or a little bit more  
25 than double, because -- especially if it goes to closure.

1 And that's where the issue is. If you do a risk screen  
2 and it fails, then there is no reason in doing the full  
3 report. You just say, here, you've done your screen, now  
4 we've got to move on to a work plan or go to remediation.  
5 If it passes, then you have to do the full report, which  
6 in rule as far as what's required.

7 I didn't know that there was a problem until all  
8 of a sudden there was some denials coming back, and I  
9 said, why are we being denied for these things, and then  
10 find out what we are doing is completely different.

11 MR. MC NEELY: Has this been anything recent?

12 MR. GILL: No. It's been a while.

13 MR. MC NEELY: I haven't heard about this in a  
14 long time.

15 CHAIRPERSON CLEMENT: Probably since last  
16 October.

17 MR. GILL: But I thought it would be a relatively  
18 simple fix, so that we're really looking at apples to  
19 apples, so we're not doing two different things. And it  
20 is my understanding at that meeting, it dawned on me we  
21 didn't even know we were looking at different things, we  
22 were doing it differently. I thought DEQ was putting in  
23 their model the exact same way we were, just for the  
24 simple screen.

25 CHAIRPERSON CLEMENT: I think that clarifies the

1 issue.

2 MR. MC NEELY: I will report back on that.

3 CHAIRPERSON CLEMENT: Thank you very much, Mr.  
4 McNeely and Mr. Gill.

5 The next one is Mr. McNeely, Status of Policy  
6 Commission Member Appointments.

7 MR. MC NEELY: We've been asking for any  
8 interested parties to submit resumes. We've had three  
9 resumes submitted, and that's it, though.

10 I know Ms. Gaylord wants to move over and take  
11 over the lawyer, environmental lawyer for Cynthia  
12 Campbell. That would leave the small owner/operator  
13 vacant.

14 And I don't -- I'm not sure how to market this,  
15 how to get people to submit names or resumes. I don't  
16 know if anybody wants to do this, you know, and even the  
17 current members, no one's really said that they want to  
18 stay or not stay, it's really been pretty quiet. So I'm  
19 not sure. I'm asking for help. I don't know how to do  
20 this.

21 CHAIRPERSON CLEMENT: I don't either, because I  
22 think we can ask the current members that are interested  
23 in continuing to notify you and provide you the necessary  
24 materials.

25 The folks that I have heard that are interested

1 in staying, although it's a different position, Ms.

2 Gaylord is interested in staying on the Commission, Ms.

3 Martincic, as I understand, is interested in staying in

4 the same position.

5 MS. MARTINCIC: Correct.

6 CHAIRPERSON CLEMENT: I have not yet heard from

7 Ms. Foster, so I'm not sure what she wants to do.

8 MR. MC NEELY: Ms. Foster, you mentioned like a

9 year ago that if I could find someone that you'd be

10 willing to step aside.

11 MS. FOSTER: I would be.

12 MR. MC NEELY: I do actually have a name for a

13 city person that submitted their resume.

14 MS. FOSTER: Well, let me know when I'm replaced

15 so I don't have to come to meetings.

16 MR. MC NEELY: I was sitting on it because I

17 wanted to have input from everybody. The process would be

18 to submit the resumes to the Governor's office and she

19 will make her decisions whenever, but I didn't want to

20 just submit a resume here and there, if I could submit

21 them all and say, here's the whole package, but I don't

22 know if I'll ever get a whole package, so I'm thinking

23 about just submitting what I have.

24 CHAIRPERSON CLEMENT: Do we have someone

25 interested in replacing Ms. Gaylord and the small owners?

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had  
upon the foregoing hearing are contained in the shorthand  
record made by me thereof and that the foregoing 83 pages  
constitute a full true and correct transcript of said  
shorthand record all done to the best of my skill and  
ability.  
DATED at Phoenix, Arizona, this 24th day of  
January, 2007.

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Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477